

## The 2004 Florida Statutes

### **255.20 Local bids and contracts for public construction works; specification of state-produced lumber.--**

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. For electrical work, local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have a cost of more than \$50,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, construction costs include the cost of all labor, except inmate labor, and include the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law to the contrary, a county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at costs in excess of \$250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. Any contractor may be considered ineligible to bid by the governmental entity if the contractor is behind on completing an approved progress schedule for the governmental entity by 10 percent or more at the time of advertisement of the work. Any contractor prequalified and considered eligible by the Department of Transportation to bid to perform the type of work described under

the contract shall be presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) With respect to contractors not prequalified with the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications shall include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures shall provide for an appeal process within the authority for objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) The provisions of this subsection do not apply:

1. When the project is undertaken to replace, reconstruct, or repair an existing facility damaged or destroyed by a sudden unexpected turn of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

- a. An immediate danger to the public health or safety;

- b. Other loss to public or private property which requires emergency government action; or

- c. An interruption of an essential governmental service.

2. When, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or responses.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system when such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. When the project is undertaken as repair or maintenance of an existing public facility.

6. When the project is undertaken exclusively as part of a public educational program.
7. When the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.
8. When the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project before completion or the local government has terminated the contract.
9. When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. In deciding whether it is in the public's best interest for local government to perform a project using its own services, employees, and equipment, the governing board may consider the cost of the project, whether the project requires an increase in the number of government employees, an increase in capital expenditures for public facilities, equipment or other capital assets, the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.
10. When the governing board of the local government determines upon consideration of specific substantive criteria and administrative procedures that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor according to procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted prior to July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied

uniformly by the local government to avoid award of any project in an arbitrary or capricious manner. This exception shall apply when all of the following occur:

a. When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting ordinance.

b. In the event the project is to be awarded by any method other than a competitive selection process, the governing board must find evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, or will materially increase the cost of the project or will create an undue hardship on the public health, safety, or welfare.

c. In the event the project is to be awarded by any method other than a competitive selection process, the published notice must clearly specify the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. In the event the project is to be awarded by a method other than a competitive selection process, the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection; and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d)1. If the project is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. If the project uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. If the project is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999, and is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999, and is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner as inspections required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(2) The threshold amount of \$200,000 for construction or \$50,000 for electrical work must be adjusted by the percentage change in the Consumer Price Index from January 1, 1994, to January 1 of the year in which the project is scheduled to begin.

(3) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must always specify lumber, timber, and other forest products produced and manufactured in this state whenever such products are available and their price, fitness, and quality are equal. This subsection does not apply when plywood specified for monolithic concrete forms, when the structural or service requirements for timber for a particular job cannot be supplied by native species, or when the construction is financed in whole or in part from federal funds with the requirements that there be no restrictions as to species or place of manufacture.

(4) Any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall have standing to challenge the propriety of the local government's actions when the local government seeks to invoke the provisions of this section. The prevailing party in such action shall be entitled to recover its reasonable attorney's fees.

**History.**--s. 1, ch. 61-495; s. 1, ch. 94-175; s. 4, ch. 95-310; s. 5, ch. 95-341; s. 1, ch. 99-181; s. 62, ch. 2002-20; s. 9, ch. 2003-286.